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Libel and Slander--Libel Per Se--Pleading--Purpose of Innuendo--Publication Not Capable of Libelous Construction (Katherine Kimmerle v. New York Evening Journal, 262 N.Y. 99 (1933))

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LIBEL AND SLANDER—LIBEL PER SE—PLEADING—PURPOSE OF INNUENDO—PUBLICATION NOT CAPABLE OF LIBELOUS CONSTRUCTION.—Defendant published an account setting forth facts relating to the criminal career of a murderer, which included the statement that five days after his marriage to a woman in Chicago, he was "courting" the plaintiff at a rooming house which she conducted in New York. Plaintiff contends words so published are libelous *per se. Held,* article causing plaintiff embarrassment and discomfort, but having no bearing upon her personal reputation, not libelous *per se. Katherine Kimmerle* v. *New York Evening Journal,* 262 N. Y. 99, 186 N. E. 217 (1933).

The law of defamation is concerned only with injuries to one's reputation. Except to the limited extent provided by statute,[1] there is no right of privacy. Written words, the effect of which is to invade privacy and bring undesired notoriety, are without remedy unless they also appreciably affect reputation.[2] Reputation is said, in a general way, to be injured by words which tends to expose one to public hatred, shame, contempt, ridicule, aversion, ostracism, degradation or disgrace, or to induce an evil opinion of one in the minds of right-thinking persons and to deprive one of their confidence and friendly intercourse in society.[3]

In the instant case, the plaintiff's claim that the word "courting" implied immoral relations, and its use in the article imputed such relations to her, was rejected. The word "courting," being of vague content, includes varied conduct and is susceptible to various meanings.[4] The article in question, being innocent on its face, and no innuendo having been proved, the action cannot be maintained.[5] Whether the defamatory language is actionable *per se,* is a question for the court, unless it is of such character that an innuendo is needed to bring out the latent injurious meaning, in which event it must be left to the jury to determine whether the language was understood in the defamatory sense set forth in the innuendo.[6] Where the defamatory character of an utterance is latent, it is necessary for the plaintiff to explain the disingenuous words and phrases and disclose their true

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[1] Lord Moulton, *Law and Manners* (1924) 123 THE ATLANTIC MONTHLY —.

[2] N. Y. CIVIL RIGHTS LAW (1911) §50.

[3] RULES OF CIVIL PRACTICE (1921) §96; Robinson v. Johnson, 239 Fed. 671 (C. C. A. 8th, 1917); Palmer v. Mahin, 120 Fed. 737 (C. C. A. 8th, 1903); Turton v. New York Recorder Co., 144 N. Y. 144, 38 N. E. 1009 (1894); Bennett v. Commercial Advertiser Assn., 230 N. Y. 125, 129 N. E. 343 (1920); Sydney v. Macfadden Newspaper Pub. Corp., 242 N. Y. 208, 151 N. E. 209 (1926); Mycroft v. Sleight, 90 L. J. 883 (K. B. 1921).

[4] Horton v. Binghamton Press Co., 122 App. Div. 332, 106 N. Y. Supp. 875 (1907).

[5] Horton v. Binghamton Press Co., *supra* note 4; Demos v. New York Evening Journal, 210 N. Y. 13, 103 N. E. 771 (1913); Sydney v. Macfadden Pub. Corp., *supra* note 3.

[6] Velikanje v. Millichamp, 67 Wash. 138, 120 Pac. 876 (1912); ODGERS, LIBEL AND SLANDER (5th ed.) 115.

meaning.[7] Where, in an action for imputation of unchastity or immorality, or where the alleged libelous words are susceptible of various meanings, one being lack of chastity, the words charged are actionable only by reason of extraneous facts, these facts must be averred so as to show that an actionable charge has been imputed.[8] This is accomplished by properly alleging those extrinsic facts and circumstances in the past and present relations of the parties, or the facts surrounding the publication, by which the jury shall be justified in giving to words, not ordinarily actionable, a libelous signification.[9] However, the meaning of the words cannot be extended by innuendo beyond their natural import, aided by reference to the extrinsic facts with which they may be connected.[10] The words must be construed in the sense which hearers of common and reasonable understanding would ascribe to them, even though particular individuals, better informed on the matter alluded to, might form a different judgment on the subject.[11]

In general, the right to an action for libel, where special damages are not sought, depends upon a publication of matter affecting the reputation of the plaintiff, of that character which is defined by law as necessarily causing actionable damage, made or authorized by defendant in violation of a legal duty.

C. M. DE P.

MARRIAGE—FRAUDULENT REPRESENTATIONS—RECOVERY OF DAMAGES.—After having avoided her marriage on the ground of fraud, the plaintiff brought this action against the father and sister of her former husband for false representations. The fraud alleged in this case concerned the state of health and the moral habits of her then prospective husband. A suspicion arose in the minds of the plaintiff and her family that the groom had been suffering with some

[7] Hemmens v. Nelson, 138 N. Y. 517, 34 N. E. 342 (1893); Crashley v. Press Pub. Co., 179 N. Y. 27, 71 N. E. 258 (1904); Quinn v. Prudential Ins. Co., 116 Ia. 552, 90 N. W. 349 (1902); Belknap v. Ball, 83 Mich. 583, 47 N. W. 674 (1890).

[8] Grant v. New York Herald Co., 138 App. Div. 727, 123 N. Y. Supp. 449 (1st Dept. 1910); Moore v. Levy, 191 N. Y. Supp. 165 (1921); Hemmens v. Nelson, *supra* note 7.

[9] Hanchett v. Chiarovich, 101 Fed. 742 (C. C. A. 9th, 1900); Penry v. Dozier, 161 Ala. 292, 49 So. 909 (1909), noting the meaning of inducement, colloquium and innuendo in common law pleading; Quinn v. Prudential Ins. Co., *supra* note 7.

[10] Woodruff v. Bradstreet Co., 116 N. Y. 217, 23 N. E. 354 (1889); Simons v. Burnham, 102 Mich. 189, 60 N. W. 476 (1894); Blake v. Smith, 19 R. I. 476, 34 Atl. 995 (1896).

[11] MOAKS UNDERHILL, TORTS, 122; Phillips v. Barber, 7 Wend. 439 (N. Y. 1831); Jarnigan v. Fleming, 43 Miss. 710 (1871); Hankinson v. Bilby, 16 M. & W. 442, 2 C. & K. 440 (1847).